

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

Gary Holt, Jr.,	)	Case No. 3:09-cv-1154
	)	Judge Campbell
Plaintiff,	)	Magistrate Judge Knowles
	)	
v.	)	
	)	
Davidson County Sheriff's Office, et al.,	)	
	)	
Defendants.	)	

DENIAL OF ENTRY OF DEFAULT

Pending is Plaintiff's Application for Default against Defendant Davidson County Sheriff's Office (Docket Entry No. 64). Defendant filed a Response to Plaintiff's Motion for Default on December 14, 2010 (Docket Entry No. 67). In addition, Defendant filed a Motion to Dismiss on the same date (Docket Entry No. 69). As stated in Defendant's Response to the motion for default, it appears to the Clerk that service was not performed properly in this case. Without proper service, the case cannot proceed against this Defendant.

In addition, since Plaintiff has filed a motion to dismiss, that filing constitutes a responsive pleading such that even if service had been properly performed, the entry of default in this case would not be proper. "Judgment by default is a drastic step which should be resorted to only in the most extreme cases." *United Coin Meter Co., Inc. v. Seaboard Coastline RR.* 705 F.2d 839 (6th Cir. 1983). Default is not granted to Plaintiffs where a late filing does not prejudice a Plaintiff in the pursuit of his action. The Plaintiff makes no claim of prejudice and the Clerk finds none. Though

service is alleged to have been made in March of this year, the case has not proceeded to a stage where the acceptance of a late response would prejudice the Plaintiff in the pursuit of his case.

Accordingly, the Clerk declines to enter default against Defendant Davidson County Sheriff's Office.

s/ Keith Throckmorton

Keith Throckmorton  
Clerk of Court